

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3925 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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F. I. KADIYANI

Versus

STATE OF GUJARAT & ANR.  
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Appearance:

MR VS MEHTA for Petitioner

MR NN PANDYA for Respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/96

#### ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by the petitioner, a Class-II Gazetted officer, Government of Gujarat, by this Special Civil Application to the order dated 24th January 1984 of the Government of Gujarat, under which the penalty of withholding of one grade increment with future effect has been given to the petitioner.

2. The learned counsel for the petitioner contended that withholding of one grade increment with future effect is a major penalty and as such, it could have been ordered only after holding a departmental inquiry against the petitioner. In the present case the departmental inquiry has not been held and taking it to be a case of minor penalty, the said order has been passed only after giving show cause notice to the petitioner. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of Supreme Court in the Case of Avad Kishore v. Damodar Valley Corporation, reported in AIR 1994 SC 482. The learned counsel for the respondent does not controvert that the penalty of withholding of one grade increment is a major penalty. The learned counsel for the respondent further does not controvert the fact that penalty of withholding of one grade increment with future effect was given to the petitioner without holding any departmental inquiry. Reply to this Special Civil Application has not been filed by respondents and as such, the facts stated therein stand uncontroverted.

3. It is a case where major penalty has been given to the petitioner without holding departmental inquiry and as such, the order dated 24th January 1984 cannot be allowed to stand. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 24th January 1984 is set aside. However, setting aside of this order will not come in way of the respondents to pass appropriate order after holding departmental inquiry against the petitioner on the alleged misconduct. Taking into consideration the fact that the petitioner was served with chargesheet on 2nd July 1971, in case the respondents are desirous of holding inquiry against the petitioner, necessary decision in this respect may be taken within a period of one month from the date of receipt of certified copy of this order and the inquiry may be completed within a period of six months thereafter. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)

